Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Review of Quiet Zones Application Procedures	)	WT Docket No. 01-319

To: The Commission

COMMENTS OF CINGULAR WIRELESS LLC

Cingular Wireless LLC ("Cingular"), by its attorneys, hereby submits these comments in response to the *Notice of Proposed Rulemaking* in the above-captioned docket.[1] Cingular strongly supports the Commission's efforts to streamline the processing of applications for wireless facilities in "Quiet Zones," as first proposed by Cingular in its 2000 Biennial Review comments.[2] To this end, Cingular urges the Commission to modify its rules to:

- allow microwave applicants to initiate conditional operation upon filing an application if consent from the affected Quiet Zone entity has been obtained and is documented in the application;
- clarify that applicants can notify and coordinate with Quiet Zone entities in advance of filing an application; and
- eliminate the 20-day period when the FCC defers application processing while awaiting comment from the affected Quiet Zone entity if that entity has provided consent to the application and that consent is documented in the application.

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[1] *Review of Quiet Zones Application Procedures,* WT Docket No. 01-319, *Notice of Proposed Rulemaking*, FCC 01-333 (rel. Nov. 21, 2001) ("*NPRM*").

[2] *See* Biennial Review 2000 Comments of Alloy LLC, FCC 00-346, at 8 (filed Oct. 10, 2000) ("Cingular Comments"); *NPRM* at ¶ 4. Cingular was previously known as Alloy LLC.

By adopting these changes, the Commission will alleviate the application processing delays that hinder the deployment of microwave networks that are the backbone for commercial mobile radio service ("CMRS"), while still ensuring that Quiet Zones are protected from harmful interference.

DISCUSSION

Cingular, through its subsidiaries, is a national CMRS provider that is generally affected by the processing delays for new or modified radio facilities in Quiet Zones throughout the United States. Cingular has been most affected, however, by operational delays for microwave facilities in the Quiet Zone designated for the Arecibo Observatory ("Observatory") that covers the entire Commonwealth of Puerto Rico.[3] Cingular operates over one hundred common carrier point-to-point fixed microwave stations that provide backhaul for twelve cellular systems serving the Puerto Rican islands. The operational delays are the result of Commission rules that preclude the ability to commence conditional operations upon filing an application for new or modified microwave facilities in this Quiet Zone,[4] despite the fact that the Observatory is generally willing to provide written approval for microwave operations. For these reasons, Cingular suggested in the Biennial Review that the Commission re-assess its Quiet Zone coordination process.[5]

Although Cingular's comments in this proceeding focus on changes in connection with the microwave service, this does not mean that application processing delays are not experienced with other services such as the broadband Personal Communications Service and cellular

[3] *See* 47 C.F.R. § 1.924(d) (providing for notification to the Observatory).

[4] *See* 47 C.F.R. § 101.31(b)(v).

[5] Cingular Comments at 8.

radiotelephone service. Because these services do not require a filing for each and every facility, as is the case with microwave, application processing delays for these services are less of a concern. The Commission should consider adopting, however, the modifications discussed below where applicable for these services, *i.e.*, clarifying that prior coordination is permitted and eliminating the 20-day comment period when consent is present.

I. CONDITIONAL OPERATING AUTHORITY SHOULD BE APPLICABLE WHEN CONSENT HAS BEEN OBTAINED FROM THE AFFECTED QUIET ZONE ENTITY.

Pursuant to Section 101.31(b) of the Commission's rules, conditional operating authority generally commences when an application for new or modified microwave facilities is filed with the Commission.[6] Conditional authority allows applicants to proceed at their own risk with the proposed operations while the Commission processes the application. Provided no objections are received or additional information is needed, the estimated processing time for a routine microwave application is at least 45 days. Conditional authority thus expedites the construction and operation of microwave networks that are essential to the provision of CMRS by allowing applicants to forego the delays associated with the processing of applications. Harmful interference is rarely caused to incumbent licensees or the proposed operations of other applicants from such interim operations, because the proposed frequency use must be coordinated prior to filing an application.[7]

Pursuant to Section 101.31(b)(v), conditional operating authority is not applicable if the proposed facility is located within a Quiet Zone. Such applicants instead must wait until the application is granted before commencing operations. While the FCC may have adopted such a

[6] 47 C.F.R. § 101.31(b).

[7] 47 C.F.R. §§ 101.31(b)(i), 101.103(d).

requirement to ensure that the Quiet Zones are fully protected from interference, such a requirement is not justified where applicants are able to obtain the consent of the relevant Quiet Zone authority in advance of filing an application with the Commission. The inability to use conditional authority in such cases delays the operation of microwave facilities that are necessary for point-to-point communication. In some instances, operation of an entire microwave network may be delayed because of delays associated with one application to add or modify a critical site in the chain of microwave facilities.

Cingular urges the Commission to modify its rules so that applicants can initiate operations if consent from the relevant Quiet Zone entity has been obtained and is demonstrated in the application. This proposal will ensure that the authority has been given prior notice of the proposed operations and an opportunity to evaluate any potential interference concerns with the applicant in advance of site activation or modification. If prior consent has been given, then there is no reason to treat applicants for facilities in the Quiet Zone differently from other microwave applicants. As the Commission has found, conditional licensing allows "the microwave industry to operate more efficiently" and provides "greater flexibility in coordinating and consolidating construction projects."[8] Modifying the rule will further applicant flexibility while still protecting Quiet Zones from harmful interference and is therefore in the public interest.

[8] *Reorganization and Revision of Parts 1, 2, 21 and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services*, WT Docket No. 94-148, *Report and Order*, 11 F.C.C.R. 13449, 13462 (1996), *clarified in*, 15 F.C.C.R. 3129 (2000).

II. THE COMMISSION SHOULD CLARIFY THAT APPLICANTS CAN COORDINATE WITH THE QUIET ZONE AUTHORITIES IN ADVANCE OF FILING AN APPLICATION.

The Commission should clarify that applicants in all services can notify and coordinate with the relevant Quiet Zone authority prior to submitting an application. Section 1.924(d)(2) states that in services where individual station licenses are issued, such as microwave, the notification should be sent at "the same time the application is filed with the FCC."[9] Some applicants have interpreted this provision to preclude notification prior to filing an application. Prior notification should be encouraged, however, as it will expedite the processing of applications and alleviate the burden on limited agency resources. With prior notification, parties are able to coordinate interference concerns among themselves without involving the Commission staff. This, in turn, reduces, if not eliminates, the possibility of the Commission receiving objections from Quiet Zone authorities after an application is filed. Further, prior coordination will reduce the need for applicants to amend applications as a result of such objections.

A review of the Commission's relevant Quiet Zone rulemaking history also indicates that the Commission may not have intended to preclude such prior coordination. For example in a *Memorandum Opinion and Order* amending the Quite Zone rules in 1998, the Commission stated that "applicants for modified radio facilities in these services [including microwave] must provide notification of their proposed operations to the Observatory *no later than* the time their license applications are submitted."[10] In addition, before being consolidated into Section 1.924,

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[9] 47 C.F.R. § 1.924(d)(2).

[10] *See Amendment of the Commission's Rules to Establish a Radio Astronomy Coordination Zone in Puerto Rico*, ET Docket No. 96-2, *Memorandum Opinion and Order*, 13 F.C.C.R. 13683 (1998) (emphasis added) (citation omitted).

former Section 101.123 provided that notification to the Observatory "shall be made prior to, or simultaneously with, the filing of the applications."[11] A clarification of the rule is thus justified to eliminate confusion and to allow for prior coordination.

Moreover, Quiet Zone notification for microwave services can easily be combined with the current frequency coordination procedures. Pursuant to Section 101.103(d), applicants must notify incumbent licensees and other applicants of the proposed frequency use prior to filing an application with the Commission. To satisfy this requirement, applicants typically use a third-party, such as Comsearch, to notify incumbent licensees and other applicants of the proposed frequency use. Any response to the notification indicating potential interference must be provided in writing to the applicant within the 30-day notification period. If no response is received within thirty days, the applicant is deemed to have made reasonable efforts to coordinate and may file its application without a response.[12]

To accommodate the proposal for conditional authority upon a showing of consent, the Commission can modify this rule so that the affected Quiet Zone entity (which includes the FCC field offices) would instead respond in a written format within the 30-day coordination period if it had any objections.[13] The failure to respond should be considered to constitute consent, consistent with the Commission's present policy when no comments are received from the

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[11] 47 C.F.R. § 101.123(e)(1) (1998); *See Biennial Regulatory Review —Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, WT Docket No. 98-20, *Report and Order*, 13 F.C.C.R. 21027, Appendix F (1998).

[12] 47 C.F.R. § 101.103(d)(2)(iv).

[13] In addition to the coordinates for each FCC field office listed in Section 0.121, the Commission should provide the public with the addresses for all field offices to assist with the coordination process.

relevant Quiet Zone entity within the 20-day comment period.[14] In such a case, the consent requirement for conditional authority would be satisfied by the applicant providing a statement in its application (for example, in the supplemental showing issued by the frequency coordinator) that the Quiet Zone entity has been notified and no responses were received within thirty days of notification. This will reduce the need for Quiet Zone entities to formally respond in writing to every proposal while still providing operational flexibility to microwave applicants. The Commission's requirements to re-coordinate with affected parties in the event the proposed technical parameters are changed and to file an application within six months of coordination as set forth in Section 101.103 would also apply equally to coordination with Quiet Zone entities.[15]

With the proposed change, prior coordination with the Quiet Zone entities and the current frequency coordination requirement can be accomplished at the same time. The rule modification will thus "permit flexibility in coordination, while ensuring that the [Quiet Zone entity] has adequate notice of applications that could affect its operations" and should be adopted.[16]

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[14] The FCC processes applications in due course when no objections are received from the Quiet Zone entity during the 20-day period. *See* 47 C.F.R. § 1.924(d)(2) ("[T]he FCC will allow the Interference Office a period of 20 days for comments or objections in response to the application or notification. . . . If an objection to any planned service operation is received during the 20-day period . . ., the FCC will take whatever action is deemed appropriate.").

[15] *See* 47 C.F.R. § 101.103(d)(2)(viii)-(ix), (xi).

[16] *Amendment of the Commission's Rules to Establish a Radio Astronomy Coordination Zone in Puerto Rico*, ET Docket No. 96-2, *Report and Order*, 12 F.C.C.R. 16522, 16536-37 (1997), *clarified in*, 13 F.C.C.R. 13683 (1998).

III. THE COMMISSION SHOULD ELIMINATE THE 20-DAY COMMENT PERIOD WHEN EVIDENCE OF PRIOR CONSENT IS INCLUDED IN AN APPLICATION.

The Commission should not have to wait twenty days for comments from the affected entities in the Quiet Zones when consent from the affected entities already has been obtained and demonstrated in the application. The comment period is intended to provide Quiet Zone authorities with opportunity to evaluate the technical details of the proposed operations and an opportunity to respond.[17] The longer 30-day frequency coordination procedures proposed above and a demonstration of consent satisfies these objectives. Accordingly, the Commission can dispense with the 20-day period when consent is present.

[17] See *id.* at 16531.

CONCLUSION

For the reasons stated above, the Commission should modify and clarify its rules to alleviate the impact of application processing delays on applicants by providing flexibility to coordinate and operate radio facilities in the Quiet Zones. The proposed rule changes can be accomplished while maintaining the Commission's protection over such areas and are, therefore, in the public interest.

Respectfully submitted,

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